

California Regional Water Quality Control Board  
Santa Ana Region  
Staff Report  
April 4, 2003

**Item: 18**

**SUBJECT:** Mandatory Penalty Complaint No. R8-2003-0040, Kinder Morgan Energy Partners, Colton Terminal, Rialto, San Bernardino County

**BACKGROUND**

On March 5, 2003, the Executive Officer issued Mandatory Penalty Complaint (MPC) No. R8-2003-0040 to Kinder Morgan Energy Partners (KMEP) for alleged violations of the General Groundwater Cleanup Permit for Discharges to Surface Water for Extracted and Treated Groundwater Resulting from the Cleanup of Groundwater Polluted by Petroleum Hydrocarbons, Solvents and/or Petroleum Hydrocarbons Mixed with Lead and/or Solvents (General Permit). In the MPC (attached), the Executive Officer proposed an assessment of \$48,000 for the alleged violations.

**INTRODUCTION**

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed mandatory penalties complaint against KMEP.

MPC No. 03-40 was issued by the Executive Officer to KMEP for violations of the General Permit for which the California Regional Water Quality Control Board, Santa Ana Region (Board) must impose mandatory penalties pursuant to California Water Code (Water Code) Section 13385(h) and (i).

**DISCUSSION**

The Colton Terminal is located at 2359 South Riverside Avenue in Rialto, California. On December 23, 1987, the Executive Officer issued Cleanup and Abatement Order (CAO) No. 87-151 to Southern Pacific Pipelines (predecessor to KMEP) and Unocal Corporation, in response to the overflow of approximately 22,000 gallons of unleaded gasoline from an above ground tank on December 10, 1987. On October 14, 1988, the Executive Officer issued CAO No. 88-114 to ten (10) operators at the Colton Terminal: ARCO, Chevron, Golden West Refining, Mobil, SPP, Shell, Tesoro, Texaco, Tosco and Unocal. The CAO required (1) a detailed chronological review of unauthorized releases at the Colton Terminal, (2) a facility-wide subsurface investigation to fully define the extent of petroleum hydrocarbon releases, (3) a remedial action plan for soil and groundwater cleanup activities, and (4) appropriate treatment of extracted groundwater. In 2002, KMEP started to pump and treat the contaminated groundwater in response to these CAOs.

On March 11, 2002, KMEP was authorized to discharge treated water from its groundwater treatment system at the Colton Terminal under the General Permit and in accordance with

Monitoring and Reporting Program No. 02-0007-023. The General Permit regulates the discharge of treated groundwater from petroleum contaminated sites and meets the requirements set forth in 40 CFR 122.28 classifying the permit as a general National Pollutant Discharge Elimination System (NPDES) permit.

Board staff sent a copy of the permit via email to KMEP on March 6, 2002. A copy of the General Permit was also mailed to all permit holders in January 2002. The discharge limits for tertiary butyl alcohol (TBA) are specified in the permit. TBA is a Group II pollutant as specified in Appendix A to Section 123.45 of Title 40 CFR.

Initially, KMEP did not report all detected compounds as specified in the permit, nor did KMEP provide a letter certifying the absence of a discharge prior to receiving verbal comments from Board staff in June. KMEP submitted self-monitoring reports (July through November 2002), which show effluent limit violations of TBA. These violations are summarized on Attachment "A" of the MPC.

KMEP had a total of thirteen daily maximum effluent limit violations for TBA between July 1 and November 1, 2002 and a total of four monthly average effluent limit violations. All except the daily effluent limit violation on July 17, 2003 are considered serious violations, as specified under Water Code Section 13385(h). The July 17, 2003 result did not exceed the effluent limit for TBA by more than 20 percent, and therefore, it is not considered a serious violation.

In accordance with Water Code Section 13385(h) and (i), the sixteen serious violations are subject to mandatory penalties. The Water Code specifies factors the Board shall consider in the establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

KMEP was issued a permit to discharge treated groundwater. The permit specified discharge limits for TBA. Based on self-monitoring reports supplied by KMEP, sixteen serious violations occurred between July 1 and November 1, 2002. Water Code Sections 13385(h) and (i) require mandatory penalties for serious violations.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would not have the ability to pay the proposed assessment.

3. Prior History of Violations

The CAO to address the history of unauthorized releases of petroleum hydrocarbons into the groundwater beneath the site was issued in 1988. Groundwater pumping to address the contamination was initiated in 2002.

4. Degree of Culpability

The general permit requirements are applicable to all groundwater cleanup dischargers, including KMEP. The limits specified in the permit for various constituents are for the protection of the beneficial uses of the receiving waters. Any violation of the discharge limits could have significant impact on the beneficial uses. KMEP violated the discharge limits for TBA.

5. Economic Benefit or Savings, if any, Resulting from the Violations

It does not appear that the discharger had any economic benefit from the violations that occurred.

**STATEWIDE ENFORCEMENT POLICY**

On April 18, 1996, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm and consistent. The above-described mandatory penalty complaint is in accordance with the State Enforcement Policy.

**RECOMMENDATION**

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$48,000 specified in the MPC issued by the Executive Officer on March 5, 2003.

State of California  
Regional Water Quality Control Board  
Santa Ana Region

IN THE MATTER OF:

Kinder Morgan Energy Partners, L.P.  
1100 Town & Country Road  
Orange, CA 92868

Attention: Eric J. Conard

Complaint No. R8-2003-0040  
for  
Mandatory Penalties

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Kinder Morgan Energy Partners, L. P., (KMEP) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (Board) must impose mandatory penalties pursuant to California Water Code (Water Code) Section 13385(h) and (i).
2. A hearing concerning this Complaint is scheduled for the Board's regular meeting on April 4, 2003. KMEP or its representatives will have an opportunity to appear and be heard and to contest the allegations in this complaint and the imposition of mandatory penalties by the Board. An agenda for the meeting and the staff report related to the Complaint will be mailed to you not less than 10 days prior to the hearing date.
3. If a hearing is held, the Board will consider whether to affirm, reject or modify the proposed mandatory penalties or whether to refer this matter to the Attorney General for recovery of judicial civil liability.
4. This complaint is based on the following facts:
  - a. On January 23, 2002, the Board adopted Waste Discharge Requirements, Order No. R8-2002-0007 (NPDES No. CAG918001), General Groundwater Cleanup Permit. On March 11, 2002, KMEP was authorized to discharge treated water from its groundwater cleanup system at the Colton Terminal and was required to monitor the discharge in accordance with Monitoring and Reporting Program No. 02-0007-023.
  - b. KMEP submitted self-monitoring reports (July through November 2002), which show effluent limit violations of tertiary butyl alcohol. These violations are summarized on Attachment "A" that is Page 3 of this complaint.

5. Water Code Section 13385(h) and (i) requires the Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious and/or other specific types of violations.
6. As shown in Attachment "A", KMEP had a total of seventeen violations between July 1 and November 1, 2002. All except the violation on July 17, 2003 are considered serious violations. The July 17, 2003 result did not exceed the effluent limit by more than 20 percent and therefore it is not considered a serious violation.
7. The sixteen serious violations are subject to a mandatory minimum penalty of \$3,000 per violation. In accordance with Water Code Section 13385(h) and (i), the mandatory minimum penalties for the sixteen effluent limit violations cited in Attachment "A" are \$48,000.
8. In addition, the Board may also assess administrative civil liability of \$10,000 per day for each day of violation and \$10 per gallon for each gallon discharged in excess of 1,000 gallons in accordance with Water Code Section 13385(c). The maximum administrative civil liability that may be imposed for these violations is \$5,915,000 (\$130,000 for thirteen days of violation and \$5,785,000 based on  $579,500 - 1,000 = 578,500$  gallons @ \$10 per gallon).
9. In assessing the penalty, the Board must consider the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator the ability to pay, any prior history of violations, the degree of culpability, economic benefits, or savings resulting from the violation, and other matters as justice may require. After consideration of these factors, the Executive Officer proposes that mandatory penalties of \$48,000 be imposed on KMEP by the Board for the violations cited above.
10. You may waive your right to a hearing. If you waive your right to a hearing, please sign the attached waiver form and return it together with a check for \$48,000 payable to the State Water Resources Control Board and the bottom portion of the invoice to Sacramento in the enclosed envelope.

If you have any questions regarding this complaint, please contact Ken Williams at (909) 782-4496 or Rose Scott at (909) 320-6375, or the Board's staff counsel, Jorge Leon, at (916) 341-5180.

3/5/03

Date

K. J. Thibeault

for Gerard J. Thibeault  
Executive Officer

## ATTACHMENT "A"

**TABLE 1. EFFLUENT LIMIT VIOLATIONS FOR TERTIARY BUTYL ALCOHOL**

VIOLATION DATE	DISCHARGE FLOW Gallons Per Day	TBA EFFLUENT LIMIT* Daily Maximum in µg/l	TBA DISCHARGE (µg/l)
07/17/2002	65,800	19	20
07/24/2002	22,600	19	45
07/31/2002	16,200	19	40
08/05/2002	0	19	58
08/07/2002	15,900	19	56
08/14/2002	86,400	19	41
09/04/2002	48,700	19	38
09/11/2002	34,400	19	68
09/18/2002	57,200	19	59
09/25/2002	66,100	19	61
10/02/2002	28,300	19	95
10/09/2002	68,500	19	38
10/23/2002	69,400	19	44

VIOLATION MONTH	TBA EFFLUENT LIMIT Monthly Average in µg/l	TBA DISCHARGE (µg/l) Monthly Average in µg/l**
July 2002	12	24.4
August 2002	12	37.2
September 2002	12	56.5
October 2002	12	37.4

\* The receiving water is the Santa Ana River, which is exempt from municipal use.

\*\* For samples without TBA reported, a TBA value of half of the TBA detection limit was used.



# State Water Resources Control Board



Winston H. Hickox  
Secretary for  
Environmental  
Protection

*The energy challenge facing California is real.  
Every Californian needs to take immediate action to reduce energy consumption.  
For a list of simple ways you can reduce demand and cut your energy costs, see our website at <http://www.swrcb.ca.gov>*

Gray Davis  
Governor

To:  
KINDER MORGAN ENERGY PARTNERS  
1100 TOWN & COUNTRY ROAD  
ORANGE, CA 92868

Invoice No: 33011  
Invoice Date: 03/06/2003  
Enforcement Action ID: 67249  
Enforcement Order No: R8-2003-0040

## INVOICE

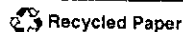
ACLCOMP

Description	Amount	Due Date
41536 LIABILITY AMOUNT	\$48,000.00	
TOTAL AMOUNT DUE		\$48,000.00

### California Environmental Protection Agency



Retain above portion for your records



Please return bottom portion with your payment

KINDER MORGAN ENERGY PARTNERS  
1100 TOWN & COUNTRY ROAD  
ORANGE, CA 92868

Make your check payable to:

State Water Resources Control Board

Mail payment to:

SWRCB ACCOUNTING  
ATTN: ENFORCEMENT  
P. O. Box 100  
SACRAMENTO, CA 95812-0100

Description	Amount	Due Date
41536 LIABDUE	\$48,000.00	
TOTAL AMOUNT DUE		\$48,000.00

Amount Enclosed: \$ \_\_\_\_\_

PLEASE PRINT THE FOLLOWING INVOICE NUMBER ON YOUR CHECK: 33011

Invoice Date: 03/06/2003  
Enforcement Action ID: 67249  
Enforcement Order No.: R8-2003-0040

IN THE MATTER OF:

Attention: : Eric J. Conard

I agree to waive the right of Kinder Morgan Energy Partners, L. P., to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0040. I have enclosed a check for \$48,000 made payable to the State Water Resources Control Board. I understand that I am giving up the right of Kinder Morgan Energy Partners, L. P., to be heard and to argue against allegations made by the Executive Officer in Complaint No. R8-2003-0040, and against the imposition of, and amount of, the mandatory penalties.

Date \_\_\_\_\_

for Kinder Morgan Energy Partners, L. P.